

# DEBT DECEPTION

How Debt Buyers Abuse the Legal System to Prey  
on Lower-Income New Yorkers

May 2010



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THE LEGAL AID SOCIETY  
NEIGHBORHOOD ECONOMIC DEVELOPMENT ADVOCACY PROJECT  
MFY LEGAL SERVICES  
URBAN JUSTICE CENTER, COMMUNITY DEVELOPMENT PROJECT

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## ACKNOWLEDGMENTS

This report was produced by a team of organizations that provide legal services to lower-income New Yorkers. Claudia Wilner, Senior Staff Attorney at the Neighborhood Economic Development Advocacy Project (NEDAP), co-wrote and co-edited the report with Nasoan Sheftel-Gomes, Staff Attorney at the Urban Justice Center, who also managed the research team. Brian Paul, a former intern with the Urban Justice Center, conducted extensive research and data analysis and contributed to initial drafts. Alexis Iwanisziw, Program Associate with NEDAP, provided extensive statistical analysis and created maps for the report. Carolyn Coffey, Senior Attorney at MFY Legal Services, April Newbauer, Attorney-in-Charge of the Civil Practice -- Queens Neighborhood Office of The Legal Aid Society, and Tashi Lhewa, Staff Attorney at The Legal Aid Society, researched, wrote, and edited sections of the report.

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Last but not least, the authors would like to recognize our clients – low-income and working poor New Yorkers who have borne the brunt of predatory debt collection practices.

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## ABOUT THE ORGANIZATIONS

**THE LEGAL AID SOCIETY** -- the nation's oldest and largest not-for-profit legal services organization -- is more than a law firm for the poor. It is an indispensable component of the legal, social, and economic fabric of New York City -- passionately advocating for low-income individuals and families across a variety of civil, criminal and juvenile rights matters, while also fighting for legal reform. The Legal Aid Society has performed this role in City, State and federal courts since 1876. It does so by capitalizing on the diverse expertise, experience, and capabilities of 850 of the brightest legal minds. These 850 Legal Aid Society lawyers work with 600 social workers, investigators, paralegals and support and administrative staff. Through a network of borough, neighborhood, and courthouse offices in 25 locations in New York City, the Society provides comprehensive legal services in all five boroughs of New York City for clients who cannot afford to pay for private counsel. The Society's legal program operates three major practices -- Civil, Criminal and Juvenile Rights -- and receives volunteer help from law firms, corporate law departments and expert consultants that is coordinated by the Society's Pro Bono program. Annually, the Society handles more than 300,000 cases and legal matters for clients with civil, criminal, and juvenile rights problems. The Legal Aid Society takes on more cases for more clients than any other legal services organization in the United States and it brings a depth and breadth of perspective that is unmatched in the legal profession.

**MFY LEGAL SERVICES, INC. ("MFY")** was founded on the principle of equal access to justice through community-based legal representation of poor New Yorkers. Working in concert with neighborhood social service providers and community advocates, MFY provides advice and representation to over 8,500 New Yorkers each year and initiates affirmative litigation that impacts many thousands of people. Through its Consumer Rights Project, MFY provides advice and representation to consumers who are harassed by debt collectors, sued in New York courts, and affected in various ways by consumer issues. Our client population is comprised of poor and low-wage workers, persons with mental and physical disabilities, and senior citizens. MFY represented Robert Druce in *Centurion Capital Corp. v. Druce*, 14 Misc. 3d 564, 828 N.Y.S.2d 851 (Civ. Ct. N.Y. Cty 2006), the first New York decision to clarify that debt buyers are considered "debt collectors" for purposes of Department of Consumer Affairs licensing under New York City Administrative Code § 20-489.

**NEIGHBORHOOD ECONOMIC DEVELOPMENT ADVOCACY PROJECT ("NEDAP")** works to promote community economic justice and to eliminate discriminatory economic practices that harm communities and perpetuate inequality and poverty. Through coalition organizing, advocacy, community education, legal services and other strategies, NEDAP promotes fair lending and financial justice in New York's low income neighborhoods and communities of color. Through its Consumer Law Project, NEDAP provides direct legal services to thousands of low-income New Yorkers each year, builds the capacity of legal services and community-based organizations to address consumer financial justice issues, and advocates for systemic reform.

**URBAN JUSTICE CENTER, COMMUNITY DEVELOPMENT PROJECT ("UJC")** is a non-profit organization that serves New York City's most vulnerable residents through a combination of direct free legal service, systemic advocacy, community education and political organizing. UJC staff represent almost 9,000 low-income and working poor New Yorkers every year. UJC's Community Development Project was formed in September 2001 to provide free legal, technical, research and policy assistance to grassroots community groups engaged in a wide range of community development efforts throughout New York City, including consumer debt work. Since 2005, UJC has represented alleged debtors in consumer credit, cell phone and medical debt cases in the New York City Civil Court. UJC has also represented victims of consumer fraud and unfair debt collection practices in affirmative litigation in State and Federal court.

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## EXECUTIVE SUMMARY

In recent years, legal services offices have been deluged by requests for help from thousands of New Yorkers who have found themselves fighting extraordinary debt collection abuse. This abuse comes in the form of frivolous lawsuits filed by debt buyers – a relatively new and fast-growing segment of the debt collection industry. Debt buyers often fail to notify people of the lawsuits filed against them and file lawsuits without having proof of their claims. The people sued – frequently very low-income, elderly, or disabled individuals – cannot effectively defend themselves. They have no legal representation, are intimidated by the court process, lack knowledge of their legal defenses, face language barriers, or do not receive notice of the lawsuits. For these reasons, despite offering no proof of their claims, debt buyers routinely win court judgments against hundreds of thousands of New Yorkers each year. The cumulative impact of these judgments is enormous: Between January 2006 and July 2008, the top 26 debt buyers extracted more than \$1 billion in judgments against New York City residents.

Debt buyer lawsuits are overwhelmingly concentrated in New York’s lowest-income communities and communities of color, with devastating results. Armed with default judgments, debt buyers can seize people’s assets, freeze their bank accounts, or garnish their wages to collect the debts. Judgments also appear on credit reports, preventing people from being able to secure housing, obtain credit, and even find employment. Judgments are enforceable for 20 years, and even longer in some cases.

In this report, we examine lawsuits filed by debt buyers and their profound impact on low- and moderate-income New Yorkers, lower-income communities, and communities of color. We begin, in Part I, with background on the debt buying industry, including an analysis of the debt buyer business model and collection methods. Part II focuses on debt buyer lawsuits, particularly the systemic problems at the root of these lawsuits. In Part III, we highlight specific findings from a study of debt buyer lawsuits in New York City. We draw results from two data sets: (1) a 365-case sample of lawsuits brought by the 26 debt buyers who filed the greatest number of cases in New York City between January 2006 and July 2008 (“Court Sample”); and (2) a 451-case sample of callers to NEDAP’s legal hotline who were sued by a creditor or debt buyer in 2008 (“Client Sample”). Finally, in Part IV, we recommend policy and legislative reforms to address the problems documented in this report.

### Key Findings

The 26 debt buyers examined in this study filed 457,322 lawsuits in the New York City Civil Court from January 2006 through July 2008 and were awarded an estimated \$1.1 billion in judgments and settlements.<sup>1</sup> Our key findings, based on our analysis of the Court Sample, are:

- Debt buyers prevailed in more than nine out of ten lawsuits (94.3%), usually by obtaining default judgments – automatic judgments entered in favor of the debt buyer because the person sued did not appear in court.
- Virtually all (95%) of people with default judgments entered against them by debt buyers resided in low- or moderate-income neighborhoods, and more than half (56%) lived in predominantly black or Latino neighborhoods.
- Not a single person sued in the Court Sample was represented by an attorney. Overall, only 1% of people sued by debt buyers in New York City are represented by counsel.
- Only 10% of people sued answered the summons and complaint.
- 41% of cases were brought by debt buyers who remained unlicensed with the New York City Department of Consumer Affairs (DCA) until legally compelled to obtain a license in July 2009. Cases filed by these debt buyers had a default judgment rate of 86.7%, far higher than the rate of 72.6% among debt buyers who were licensed during the period of the study.



- In nearly two-thirds of cases (64.1%), the debt buyers were represented by one of five law firms known for their high volume of debt collection cases: Cohen & Slamowitz, Forster & Garbus, Mel S. Harris and Associates, Mullooly, Jeffrey, Rooney & Flynn, and Rubin & Rothman.
- Nearly half of cases (47.7%) involved service by one of four process serving agencies: AAA Attorney Service, Accu-Serve, Capital Process Servers, and Samserv.

Our key findings, based on our analysis of the Client Sample, are:

- 69% of people sued by debt buyers were black or Latino.
- 35% of cases brought by debt buyers were clearly meritless, and 66% of these clearly meritless cases were brought against black or Latino clients.
- At least 71% of people sued were either not served or served improperly.

## Key Recommendations

Immediate legislative and regulatory action is needed to end abusive debt collection lawsuits. Here are our key recommendations:

- **Prohibit debt buyers from filing lawsuits without evidence.**  
Debt buyers routinely file frivolous lawsuits against low-income New Yorkers even though they have no evidence to prove the debts are owed. The New York State legislature should crack down on this unfair practice by enacting the Consumer Credit Fairness Act (CCFA), which would raise the bar on what information debt buyers have to submit to the court when filing lawsuits and applying for default judgments.
- **Aggressively regulate and monitor process servers.**  
Many people never receive notice of debt buyer lawsuits because process servers routinely engage in “sewer service” – failing to serve court papers and filing false affidavits of service with the courts. The New York City Council recently passed groundbreaking legislation intended to curb this unlawful practice. The New York City Department of Consumer Affairs (DCA) should implement strong regulations to carry out the new law and make enforcement of the new law an agency priority.
- **Expand government enforcement action against debt collectors.**  
The New York State Attorney General and the New York City DCA should continue to take aggressive action against the debt collection industry and use the findings of this report to initiate new investigations. The Federal Trade Commission (FTC) should continue to make debt collection an agency priority, with specific focus on the debt buying industry.
- **Ensure judicial review of default judgments and settlements.**  
Court clerks, rather than judges, routinely grant default judgments to debt buyers despite glaring legal deficiencies in their applications. Many people sued are pressured into unfair and unaffordable settlements that leave them in a worse position than if they had ignored the lawsuits. To ensure fundamental fairness, additional resources need to be provided to the courts so that judges can review default judgment applications and settlement agreements.
- **Increase legal representation and resources for people sued by debt buyers.**  
Overall, only 1% of people sued by debt buyers in New York City are represented by counsel. The abusive practices described in this report have flourished because of the gross imbalance of power between represented debt buyers and unrepresented New Yorkers. New York City and State should correct this imbalance by supporting increased legal representation and resources for low-income people sued by debt buyers.

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# I. THE DEBT BUYER BUSINESS MODEL

Debt buyers purchase defaulted debt -- including credit card debt, car loans, student loans, cell phone bills, medical bills, and health club bills -- for pennies on the dollar.<sup>2</sup> They purchase these debts in portfolios, from original creditors or from other debt buyers and debt brokers.<sup>3</sup> Debt buyers then attempt to collect the debts using a variety of methods, ranging from telephone calls to lawsuits.<sup>4</sup> If a debt buyer is unsuccessful in its collection efforts, it often resells the debt portfolio to yet another debt buyer, which in turn resells the portfolio if it too is unable to collect.<sup>5</sup>

## Emergence of the Debt Buying Industry

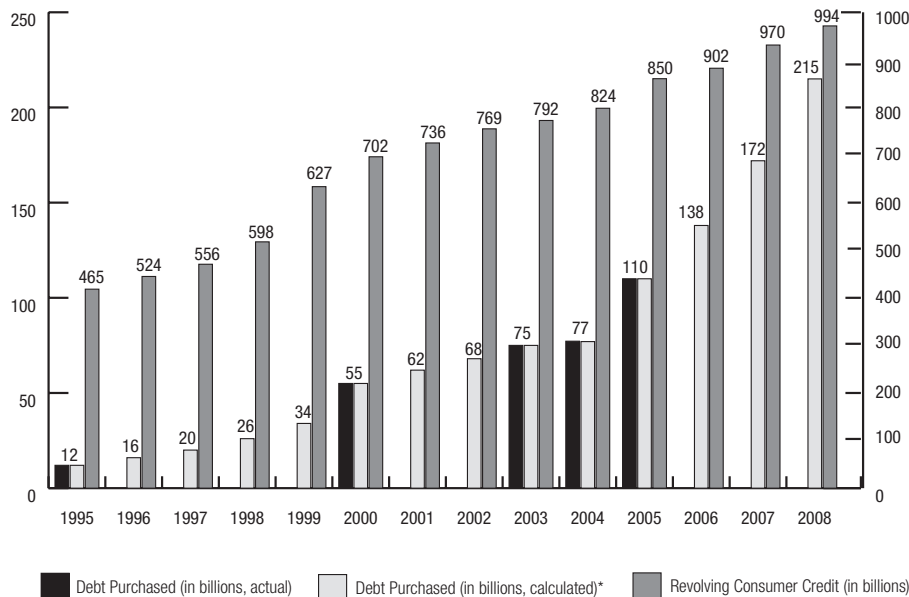
The sale and trading of charged-off<sup>6</sup> debt portfolios has its origin in the 1987 savings and loan crisis.<sup>7</sup> In the aftermath of the crisis, Congress created the Resolution Trust Corporation (RTC) to close insolvent thrifts, return insured deposits and sell any remaining assets to the private sector.<sup>8</sup> In the early 1990s, the RTC auctioned off \$458.5 billion in failed thrift assets.<sup>9</sup> A handful of debt buying companies began purchasing, collecting and profiting from these low-cost debt portfolios.<sup>10</sup> After the RTC sold all of the failed thrift assets, these debt buying companies found new business opportunities by shifting their focus to buying and collecting charged-off consumer debts.<sup>11</sup>

The emergence of the debt buying industry coincided with an explosion over the last two decades in the availability and use of consumer credit. Between 1990 and 2005, for example, the amount of outstanding credit card debt in the United States grew from \$237 billion to more than \$802 billion – an increase of 238%.<sup>12</sup> During this time living expenses rose while real wages declined.<sup>13</sup> Many low-income and working poor families came to rely on credit cards to pay for essential expenses when their salaries failed to cover their basic needs.<sup>14</sup> Worse, many borrowers were entrapped by subprime credit cards – credit cards with low credit limits but exorbitant interest rates and fees, often marketed to lower-income individuals who had limited access to mainstream financial services.<sup>15</sup> Subprime credit cards eventually accounted for more than a quarter of the credit card market.<sup>16</sup> As debt loads became unmanageable, credit card charge-offs escalated,<sup>17</sup> creating a fertile market for the debt buying industry.

By 2005, debt buyers in the United States were purchasing more than \$110 billion in face value of debt each year.<sup>18</sup> Charged-off credit card debt accounted for roughly 91% of this figure.<sup>19</sup> Debt buyers also enjoyed explosive revenue growth from 2001 to 2006, with net income at four major firms increasing more than 700% during this period.<sup>20</sup>



## Growth of the Debt Buying Industry and Revolving Consumer Credit



\*Debt buyer purchases not available for all years. Dollar value of debt buyer purchases for the years 1996-1999, 2001-2002, and 2006-2008 were estimated using a combination of published data and industry growth rates. Debt Buyer Sources: Credit and Collections World, Federal Reserve Bank of Philadelphia and Washington Post. Revolving Consumer Credit Source: Federal Reserve Board, Release G19.

## Debt Buyers' Corporate Structures

Debt buyers organize their businesses using a variety of corporate structures, but their business practices are similar across these structures and are consistently problematic for consumers.

Four publicly traded debt buyers actively purchase and collect portfolios of debt: Asset Acceptance Capital Corp., Asta Funding, Encore Capital Group, and Portfolio Recovery Associates. These companies collect debts for others, purchase and collect their own debt portfolios, and resell packaged debt portfolios to smaller regional debt buyers.<sup>21</sup> They raise money to finance their purchases by issuing stock and by using credit lines from banks,<sup>22</sup> which are often also major credit card issuers.<sup>23</sup> Because publicly traded debt buyers have annual reporting requirements, more is known about their business models than about other types of debt buyers.

There are as many as 500 privately owned debt buyers in the United States.<sup>24</sup> Little is known about how they finance their operations, though like publicly traded debt buyers, they most likely rely on private investors, commercial loans, and lines of credit. Some privately owned debt buyers have been purchased in whole or in part by private equity firms, hedge funds or other financial services companies that provide financial backing for the debt buyers' activities. For example, private equity firms and other financial services companies have purchased stakes in debt buyers like Collect America (the parent of debt buyers CACH and CACV),<sup>25</sup> Sherman Financial Group (the parent of debt buyer LVNV Funding),<sup>26</sup> and Arrow Financial Services (a Sallie Mae company),<sup>27</sup> as well as public debt buying firms such as Encore Capital Management.<sup>28</sup>

Some debt buyers are actually owned by the principals of debt collection law firms.<sup>29</sup> These companies typically purchase smaller, regionally specific debt portfolios from the large debt buyers and resellers.<sup>30</sup> Examples from the Court Sample include the following law firms and related debt buying LLCs: Mel S. Harris and Associates (Pinpoint Technologies); Cohen & Slamowitz (Gemini Asset Recoveries and Metro Portfolios); Eltman Eltman & Cooper (Erin Capital Management); and Mullooly, Jeffrey, Rooney & Flynn (NY Financial Services).

Major banks are a financial life force of the debt buying industry. They offer credit on unaffordable terms to consumers, sell the resulting debts to debt buyers, and finance the debt buyers' purchases with commercial lines of credit. For example, Bank of America, JPMorgan Chase, and Citibank, three of the five largest credit card issuers in the United States,<sup>31</sup> provide a significant amount of financing to Encore Capital Group, one of the largest debt buyers by revenue.<sup>32</sup> Encore currently enjoys a revolving loan commitment of \$327.5 million from 11 banks; Bank of America and JPMorgan Chase finance nearly one third of that revolving loan commitment, with credit lines of \$50 million each, while Citibank provides \$25 million.<sup>33</sup>

## What Debt Buyers Purchase

When debt buyers purchase debts, they become legal owners of those debts, but obtain very little information about them.<sup>34</sup> Debt buyers usually receive an electronic file that includes only a person's name and social security number, last known address, the amount allegedly owed, the charge-off date, and the date and amount of the last payment.<sup>35</sup> The portfolio does not include documentation of the debt, such as the governing contracts and account statements.<sup>36</sup> This information is insufficient to ensure that the debt buyers collect the correct amount from the correct person.<sup>37</sup> Debt portfolios are regularly sold on an "as is" basis, without consideration for whether collection of the debts in the portfolio is legal.<sup>38</sup>

Debt buyers' ability to obtain additional documentation from the original creditor is extremely limited: they may purchase the right to request such documentation in a limited number of cases, or they may not have access to any supporting documentation at all.<sup>39</sup> If the debt is resold to another debt buyer, obtaining such documentation becomes even more difficult, as most second and subsequent sales of debt portfolios do not include any direct access to the additional documentation from the original creditor, which means that those debt buyers almost certainly lack the documentation needed to support lawsuits filed against people whose names appear in their portfolios.<sup>40</sup>

The price of the debt is influenced by the availability of and demand for charged-off debts, the perceived likelihood of collection, and the quality of the debt.<sup>41</sup> Debt buyers also consider debtors' personal characteristics when assessing the value of a portfolio. Some, like Asset Acceptance and Portfolio Recovery Associates, use borrower demographics,<sup>42</sup> and most consider borrower assets, such as whether the borrower works or owns a house.<sup>43</sup> Debt portfolios that were previously worked and then resold by debt buyers are worth less because the first buyer or buyers of the portfolio have already skimmed the easily collected debts from the portfolio.<sup>44</sup> There are even markets for debts that are not legally collectable, such as debts discharged in Chapter 7 bankruptcy or debts of the deceased.<sup>45</sup>

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**In 2008, debt portfolios were selling for as much as 12 cents per dollar of debt, but have since fallen to between four and seven cents per dollar for newly charged-off credit card debt – between one and three cents per dollar, and for older or harder to collect debts, are selling for even lower.<sup>46</sup>**

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## Debt Buyer Collection Methods

Debt buyers employ a range of collection tactics, from sending collection letters to filing lawsuits.<sup>47</sup> Reporting debts to the credit bureaus is also a powerful, but low-cost option for debt buyers, as consumers who are trying to secure a loan will often check their credit reports and repay any past due debts that are being reported, whether or not they actually owe the debts, in order to improve their credit scores.<sup>48</sup> If consumers are willing but not able to pay the alleged debts, some debt buyers even offer to refinance them on sub-prime credit cards that have deceptive terms and high fees.<sup>49</sup> Debt buyers claim that these high-cost cards give consumers a chance to rebuild their credit while paying off their debt in installments, but this scheme can ensnare consumers into using a predatory product to repay debts they might not even owe or be obligated to pay.

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## II. DEBT BUYER LAWSUITS

Over the past decade, evidence from both debt buyers and court records show that debt buyers have turned increasingly to filing lawsuits to collect debts.<sup>50</sup> Data from the four publicly traded debt buyers reveal an increased focus on legal collections each year since 2002.<sup>51</sup> At Encore Capital Group, for example, legal collections accounted for 48% of gross collections in 2008, up from 20% in 2003.<sup>52</sup> Respondents to a debt collection industry survey reported a “surge in legal collection placements” as part of their response to the 2008 economic crisis.<sup>53</sup> One prominent debt buyer saw a 95% increase in revenue from legal collections during the first quarter of 2009.<sup>54</sup> In 2007, Asta Funding’s Chief Financial Officer put it simply: “We’re looking to sue.”<sup>55</sup>

In recent years, civil courts across the country have been overwhelmed by surges in debt collection filings. The Federal Trade Commission recently observed that “[t]he majority of cases on many state court dockets on a given day often are debt collection matters” and that the glut of debt collection cases has “posed considerable challenges to the smooth and efficient operation of courts.”<sup>56</sup> In New York City, debt collectors filed approximately 300,000 lawsuits *per year* between 2006 and 2008.<sup>57</sup> The vast majority of cases result in default judgments – automatic wins for the debt buyer because the person sued did not appear in court.<sup>58</sup>

### “Sewer Service”

A major reason for the high rate of default judgments is the fact that many people do not know they have been sued.<sup>59</sup> Evidence suggests that people rarely receive notice of lawsuits brought by debt buyers.<sup>60</sup> Debt buyers often send notices to addresses associated with the underlying credit card accounts, which are often outdated and no longer valid.<sup>61</sup>

Worse, many of the process servers hired to serve papers in consumer credit actions engage in “sewer service” – the practice of failing to serve court papers (and instead throwing them in the “sewer”) and filing false affidavits of service with the courts. The problem has been well documented in New York.<sup>62</sup> In 2008, the New York State Attorney General on behalf of the Chief Administrative Judge of New York filed suit against 35 debt collection law firms and two debt collection companies. The case, *Pfau v. Forster & Garbus*, seeks to vacate more than 100,000 default judgments allegedly entered because of sewer service by a single process serving agency. The case is currently pending.

Payment practices within the debt collection industry appear to contribute to the high rates of sewer service in debt buyer cases. Debt collection law firms usually enter into bulk contracts with process serving agencies, which, in turn, hire individual process servers to carry out the service.<sup>63</sup> These process servers often work as independent contractors, not salaried employees, and are paid on a piecework basis of \$3-6 per completed service.<sup>64</sup> These wages have not increased significantly since 1986,<sup>65</sup> and are, in fact, so low that it is impossible for a process server to serve all papers properly and still make the minimum wage.<sup>66</sup> Process servers who serve papers in non-debt collection matters earn significantly more.<sup>67</sup> On top of that, most debt collection law firms will not pay process servers for unsuccessful attempts at service, a practice that further encourages process servers to lie about having completed service.<sup>68</sup>

### Lack of Proof

The staggering number of default judgments obtained through sewer service masks the fact that debt buyers rarely have admissible evidence of the debt and that many cases are meritless.<sup>69</sup> As discussed above, debt buyers typically do not purchase documentation of debts, such as credit applications bearing signatures, the contracts that applied to each account, account statements, or customer service records that would confirm or clarify fraud claims or customer disputes. While some debt buyers have a contractual right to obtain a portion of this information in a limited number of cases, this is far from the norm.<sup>70</sup> In the vast majority of cases filed, debt buyers cannot provide documentation of the underlying debt.<sup>71</sup> The law requires that debt buyers provide proof of their claims in order to win a case. If a debt buyer cannot do so, and the case is contested, the case must be dismissed.<sup>72</sup>

## Lack of Legal Representation

Unfortunately, few debt buyer cases are contested. Most people do not receive notice and thus are not aware of the court proceedings, and most of those who do receive notice and appear have no legal representation.<sup>73</sup> Court statistics reveal that only 1% of people sued by creditors have legal counsel.<sup>74</sup> The law requires litigants, whether represented or not, to raise important defenses or else waive them, even though they generally have no knowledge of their legal rights.<sup>75</sup> Most people are afraid of what might happen to them in court and are unprepared to defend themselves.<sup>76</sup> Debt buyers take advantage of this imbalance of power to pressure people into unaffordable settlements on debts that cannot be proven.<sup>77</sup> By contrast, in the rare event that an individual has counsel, debt buyers tend to abandon cases, presumably because they know they will have difficulty producing the documentation to prove their cases at trial.<sup>78</sup>

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### Case in Point: Mel S. Harris and Associates LLC

As one of the larger debt collection law firms in New York City, the firm of Mel S. Harris and Associates LLC (“the Harris Firm”) offers an example of typical debt buyer litigation practices in consumer debt lawsuits and the challenges these tactics present to the people sued.

People sued by the Harris Firm are often faced with lawsuits that allege unfamiliar debts, filed by debt buyers whose names they do not recognize. The firm’s pleadings reviewed for this report featured complaints that all referred vaguely to a “retail charge account”<sup>79</sup> and rarely listed a specific account number. Three debt buyers represented almost exclusively by the Harris Firm – LR Credit,<sup>80</sup> Pinpoint Technologies,<sup>81</sup> and Rushmore Recoveries<sup>82</sup> – do not maintain public websites or offer any information to the public. Though it filed more cases than any other debt buyer in New York City from January 2007 through July 2008 (a total of 49,900 cases), LR Credit avoided licensing by the DCA until legally compelled to do so in July 2009. Pinpoint Technologies never obtained a license from the DCA.<sup>83</sup>

Debt buyers represented by the Harris Firm achieved an initial default judgment rate of 94%, compared to 77.7% for all other debt buyers reviewed in our study. Only 3.6% of people sued by the Harris Firm filed an answer.

Individuals sued by the Harris Firm find themselves without the information necessary to properly defend themselves in court. One of the few people in our study who answered a Harris Firm summons described this predicament perfectly: “I have doubts about this debt. There is no specific information. I don’t know if I owe the money.”

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As stated before, debt collection lawsuits, especially those resulting in default judgments, have a significant impact on low- and moderate-income New Yorkers.<sup>84</sup> Debt buyers use default judgments to freeze people’s bank accounts, garnish their wages, and pressure them into unaffordable settlements.<sup>85</sup> Judgments also appear on credit reports, preventing people from being able to secure housing, obtain credit, and even find employment.<sup>86</sup> The cumulative impact of these judgments when examined over multiple years is appalling.

**This case study and the others that follow in the report are typical cases from NEDAP’s legal hotline and exemplify the problem of meritless cases filed by debt buyers.**

***Ms. V**, a single working mother who lives in the Bronx, supports four children, and speaks only Spanish, had six default judgments against her, all obtained by debt buyers. Ms. V learned about the lawsuits for the first time when the debt buyers started garnishing her wages. Ms. V was not served in any of the cases. Three of the six lawsuits were served at the wrong address, and the remaining three alleged substitute service on a fictitious family member. As for the underlying debts, Ms. V did not believe that they were hers. In addition, it appeared that several of the debt buyers had obtained default judgments on the same alleged debt.*

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### III. THE STUDY: THE SCOPE AND IMPACT OF DEBT BUYER LAWSUITS IN NEW YORK CITY

In an effort to learn more about debt buyer lawsuits and their impact on New Yorkers and their neighborhoods, we undertook a study of debt buyer filings from January 2006 through July 2008.<sup>87</sup> We began by identifying the 26 debt buyers that filed the most lawsuits in New York City. We then reviewed a stratified sample of 365 case files (the “Court Sample”) selected to provide a full and accurate snapshot of lawsuits filed by debt buyers throughout the five boroughs of New York City. We reviewed the Court Sample for a range of data and recorded the outcomes for 336 of the 365 cases.<sup>88</sup> We supplemented the Court Sample with a 451-case data set comprised of records of people who called NEDAP’s legal hotline in 2008 because they had been sued by a creditor or debt buyer (the “Client Sample”). Together, these data sets allowed us to gain a clearer picture of debt buyer lawsuits, including their impact on New Yorkers and their neighborhoods, and to identify several areas of abuse that raise particular concern and deserve further scrutiny.

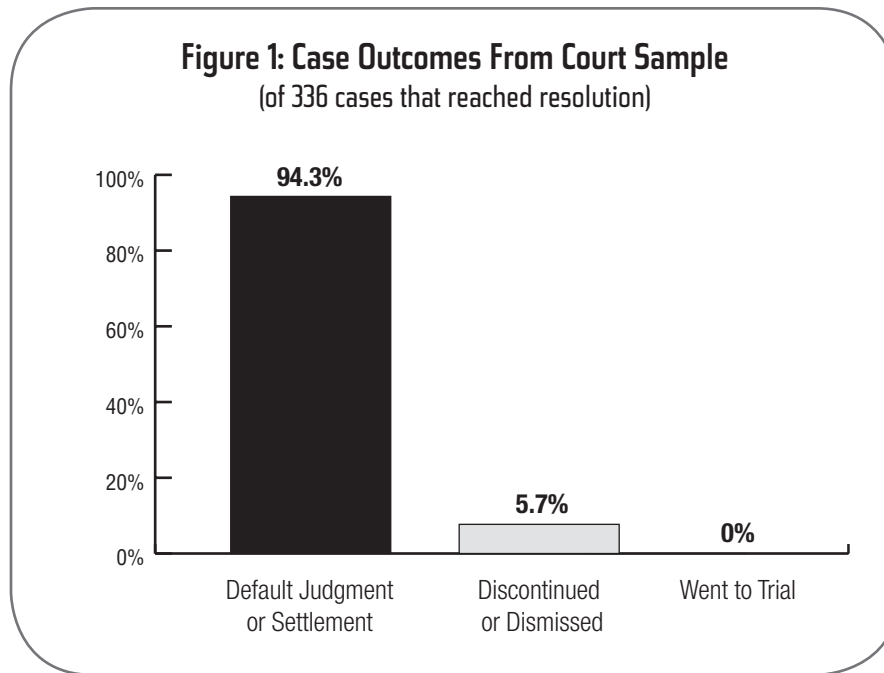
#### Case Outcomes Overwhelmingly Favor Debt Buyers

Below is a summary of outcomes in the 336 cases from the Court Sample that had reached a resolution at the time we reviewed the files. In the vast majority of cases, 94.3%, the outcomes favored the debt buyers.

- Four out of five cases (81.4%) initially resulted in default judgments for the debt buyers.
- 24 people entered into settlement agreements, of whom more than half stated in court papers that they questioned the validity of the debt or believed the charges were inflated.
- No person sued was represented by counsel (in contrast to the general population where 1% of defendants are represented).
- No cases went to trial.
- Most of the cases (82%) concerned credit card debts, and the rest were a combination of cell phone, health club, and other debts.

With respect to the amounts of the debts, our analysis showed the following:

- The median debt amount alleged was \$2,150.
- The median default judgment awarded was \$2,577. Because default judgments entitle debt buyers to recover the full amount of the alleged debt, plus court costs and 9% interest, a default judgment is always worth more than an alleged debt. In our sample, debt buyers used default judgments to inflate the alleged debt amounts by nearly 20%.
- Debt buyers in the Court Sample alleged debts ranging from \$340 to \$24,963, for a total of \$1.31 million.
- Extrapolating from the Court Sample, a fair estimate of the total amount awarded to these debt buyers from January 2006 through July 2008 was a staggering \$1,098,430,663 -- over one billion dollars.<sup>89</sup> The impact of these lawsuits is overwhelmingly concentrated in low- and moderate-income communities and communities of color.



Our findings also raise questions about whether people are receiving actual notice of debt buyer lawsuits.

- In the Court Sample, less than 10% of people sued answered the summons and complaint.
- In the Client Sample, 71% of people sued were either not served or served improperly, and more than half received no notice of the lawsuit at all.
- Only 8% of people in the Client Sample were properly served.<sup>90</sup>
- Nearly half (47.7%) of cases in the Court Sample involved service by one of four process serving agencies – AAA Attorney Service, Accu-Serve, Capital Process Servers, or Samserv.
- Two of the three individual process servers who served the most cases in the Court Sample have checkered histories: one featured prominently in the *Pfau* case and the other recently had his process server license revoked.

**Mr. R**, a 48-year-old man from the Bronx, first discovered that he had been sued by a debt buyer when his debit card was denied while he was shopping for groceries. He went to his bank and learned that his bank account had been frozen by a debt buyer that had obtained an \$18,000 default judgment against him. The debt buyer had sued him for an account he had never owned; served him at an address where he had never lived; and even gotten his name wrong in the court papers. After Mr. R obtained advice from an attorney, he filed an order to show cause and was able to vacate the default judgment and release his bank account. He also raised the defense of identity theft/ mistaken identity, and his case was dismissed when the debt buyer's lawyers failed to show up in court.



Our review of the Client Sample suggests that many cases brought by debt buyers are, in fact, meritless. Furthermore, the filing of meritless cases disproportionately affects people of color. Our analysis of the Client Sample shows that:

- 69% of people sued by debt buyers were black or Latino.
- 35% of cases brought by debt buyers were clearly meritless.<sup>91</sup>
- 66% of these clearly meritless cases were brought against black or Latino clients.
- Overall, nearly 25% of all debt buyer lawsuits consisted of meritless cases filed against black or Latino clients.

That 35% of debt buyer lawsuits were identified as clearly meritless does not indicate that the remaining 65% of cases were meritorious. Many of the remaining cases in the Client Sample were also not proven, and were ultimately dismissed because the debt buyer could not produce evidence of the debt. Of course, all of the people in the Client Sample had access to advice and assistance from an attorney, unlike most people sued by debt buyers.

**Ms. P**, a 35-year-old woman from Brooklyn, was sued by a debt buyer on a credit card account that her ex-husband had opened in her name without her knowledge. The debt buyer's process server claimed to have served her at an address at which she had not lived for four years, and which had been converted to a commercial property prior to the date of service. Ms. P did not get notice of the lawsuit, and the debt buyer entered a default judgment against her. Ms. P's first notice that she had been sued was a restraint on her bank account, which resulted in Ms. P being charged hundreds of dollars in legal and insufficient funds fees by her bank. After obtaining advice from an attorney, Ms. P was ultimately able to get the judgment vacated and the case dismissed for improper service.

## Impact on New York City Neighborhoods

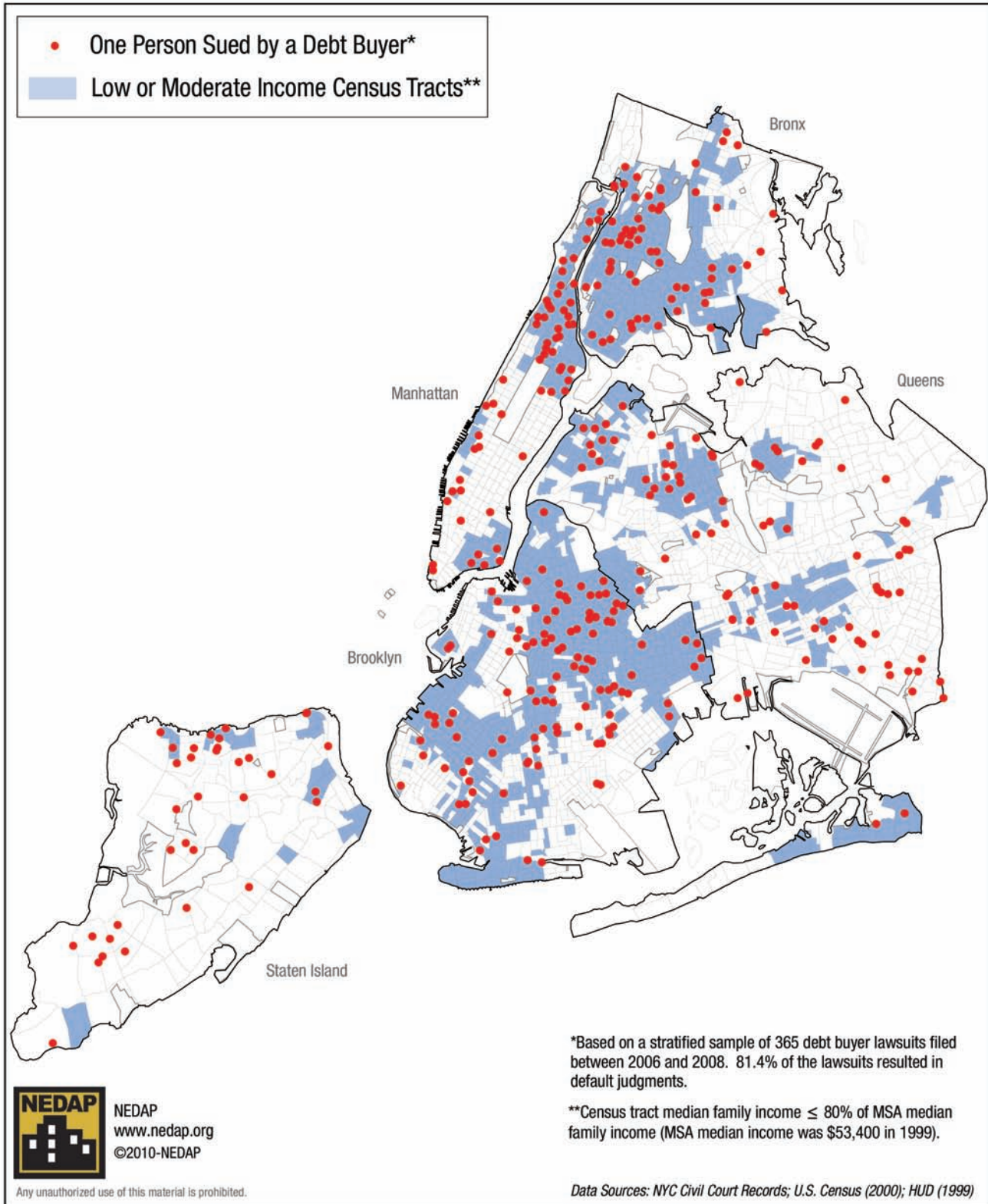
Abusive debt buyer lawsuits not only harm individual New Yorkers but also have a deleterious impact on New York City's low- and moderate-income communities and communities of color, which bear the brunt of abusive debt buyer lawsuits. Default judgments obtained by debt buyers are overwhelmingly concentrated in these communities, where thousands of New Yorkers are subject to wage garnishment and other types of judgment enforcement, such as frozen bank accounts. In other words, these practices strip lower income neighborhoods and communities of color of community assets, not only destabilizing households but also jeopardizing financial security in entire neighborhoods.

As Map 1 illustrates, 91% of people sued by debt buyers and 95% of people with default judgments entered against them live in low- or moderate-income communities.<sup>92</sup> In the 12 zip codes with the highest concentration of lawsuits in our study, one in four families lived below the federal poverty level.<sup>93</sup>

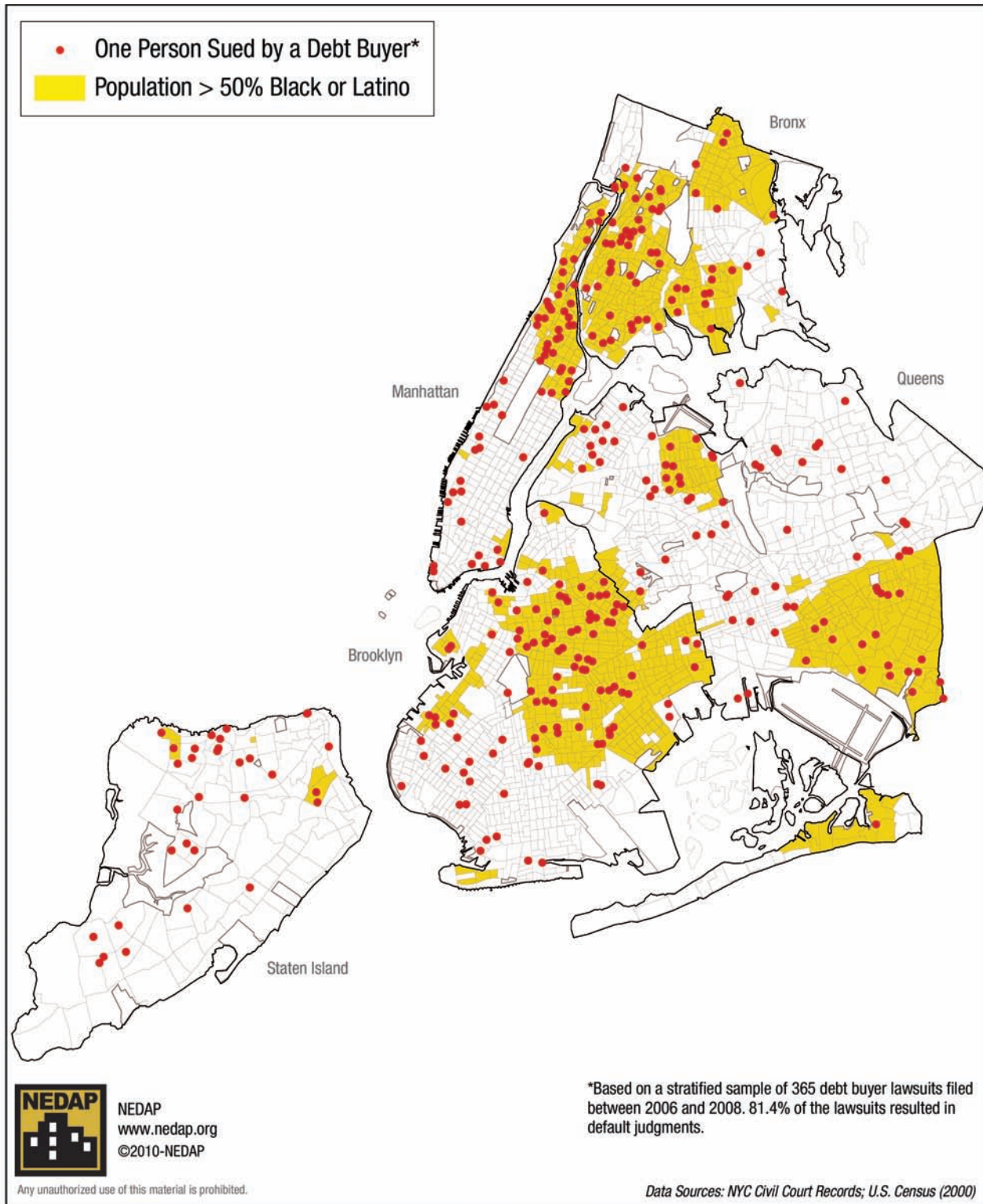
Debt buyer judgments also disproportionately affect people living in New York City's communities of color. As Map 2 illustrates, 51% of people sued by debt buyers and 56% of people with default judgments entered against them lived in communities in which the population is more than 50% black or Latino.

**Ms. F**, a senior citizen whose only income is Social Security and a small pension, was sued by a debt buyer for an alleged Sears account. Ms. F had never shopped at Sears and was a victim of identity theft. Even though Ms. F was not properly served, she did receive notice of the case in time to file an answer and appear in court. At her court date, the debt buyer's attorney threatened her by telling her that if she did not make payment arrangements they would seize her personal property. Ms. F was scared, but she nevertheless asked to see proof of the debt. Ms. F's case was ultimately discontinued when the debt buyer couldn't provide any proof.

# Debt Buyer Lawsuits in Low and Moderate Income Communities New York City



## Debt Buyer Lawsuits in Communities of Color New York City





## The Positive Impact of Licensing and Regulation

As part of this study, we examined whether the existing regulatory structure protected New Yorkers from debt collection abuse. New York City has long required debt collectors to obtain a license from DCA in order to collect debts from city residents.<sup>94</sup> However, during the period of the study, several debt buyers asserted that they did not have to be licensed because they were “passive” entities and not engaged in traditional debt collection activities. In response to those assertions, the New York City Council amended the definition of “debt collection agency” in March 2009 to expressly include all debt buyers.<sup>95</sup> As of July 2009, all debt buyers must be licensed to collect debts in New York City and to file debt collection lawsuits in court.<sup>96</sup>

Our study, which was conducted before the New York City Council clarified the licensing law, demonstrates that licensing and regulation has a positive impact on debt buyers’ behavior. In our Court Sample, unlicensed debt buyers brought more than 40% of cases. Unlicensed debt buyers obtained a significantly higher percentage of default judgments than licensed debt buyers, suggesting that unlicensed debt buyers engaged in more abusive practices.<sup>97</sup>

## Unrepresented Defendants, Improvident Settlements

When people do appear in court, judges and court personnel actively encourage settlement because it tends to free up court resources and allows the court to remove cases from the crowded calendar.

Collection attorneys typically take people into the hallways for one-sided settlement discussions, out of earshot of judges and other court personnel.<sup>98</sup> In these conversations, attorneys exert extreme pressure upon people to pay some part of the debt regardless of their defenses or the debt buyer’s lack of proof. This is a trend seen across the country, and raises questions of how fair the outcomes in these cases can be, given such an uneven playing field.<sup>99</sup>

In the Court Sample, most settlement agreements provided for a payment plan of \$50 - \$100 per month, with the condition that if the individual defaulted in payment, the debt buyer would be able to enter judgment for the full amount of the debt, plus costs and interest. Defaults in payment were not uncommon, leading us to conclude that people are often pressured into unaffordable and unsustainable settlements.<sup>100</sup> Settlements thus provided a potential bonanza for debt buyers. When people in the Court Sample defaulted on their settlements, debt buyers were able to obtain judgments that exceeded the original debts by nearly 24%. Defaulted settlements offered the worst possible outcomes for individuals and the best possible outcomes for debt buyers.

When unrepresented people enter into settlements, they often waive significant defenses on which they could have prevailed if they had understood how to assert them. In one case from the Court Sample, E.O., a resident of Queens, was sued by a debt buyer called Palisades Collection in 2007. A default judgment was entered and her bank account was frozen. She swore that she was never served and had no knowledge of the lawsuit until her account was frozen. She expressed great confusion over the allegation that she had a debt with a company called “Palisades,” suggesting that she did not even know the plaintiff suing her, but eventually she settled anyway. Another person, D.P. of Staten Island, was also sued by Palisades Collection over an AT&T Wireless debt. D.P. stated in court papers that she did not owe the debt and denied ever having a relationship with AT&T, but she settled the case anyway for \$60 per month, even though Palisades never produced any evidence that she owed the debt. A third defendant agreed to pay \$50 per month to a debt buyer on a debt that she asserted had previously been discharged in bankruptcy.

In one shocking example, a debt buyer called Colorado Capital Investments sued B.P. of Manhattan twice for the same debt. In the first case, she obtained a dismissal *with prejudice*, which means that the court made a final determination that she did not owe the debt, and the case could never be brought against her again. Despite this result, Colorado Capital Investments sued B.P. again two years later on the same debt. This second suit was unlawful and never should have been filed, but B.P. ultimately agreed to settle this unlawfully filed case for \$75 per month.

## Insufficient Scrutiny of Applications for Default Judgments

In *Debt Weight*, the Urban Justice Center found that debt buyers routinely obtained default judgments even though they almost always failed to submit the proof required by law.<sup>101</sup> Our study shows that these practices continue. In the Court Sample, debt buyers never provided an affidavit from someone with personal knowledge of the facts of the case, as is required under New York law.<sup>102</sup> Despite these glaring deficiencies in their applications, debt buyers regularly obtained default judgments.

The problem is exacerbated by the Court's practice of giving applications for default judgments to clerks instead of judges. Court clerks are often not lawyers, and they do not have the ability to assess whether the application meets minimum evidentiary standards. This practice results in large part from the overwhelming volume of debt collection lawsuits and the Court's lack of sufficient resources to handle the increased caseload. Nevertheless, the lack of any meaningful review by someone with judicial training makes the process ripe for abuse.

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### **Custodian of Records.**

In our analysis of the Court Sample, one person stood out for signing an unusually large number of affidavits in support of debt buyer requests for default judgments. This individual identified himself as the "custodian of records" for LR Credit, Pinpoint Technologies, and Rushmore Recoveries, and provided an affidavit in support of every default judgment sought by these three companies, swearing that he had "personal knowledge of the facts" of each case. If we extrapolate to every case filed by these companies in a year, this affiant would have signed 47,503 affidavits in the year 2007 alone, claiming to have personal knowledge of the facts of each and every one of these cases.

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It can be argued that the Court's current practice of allowing clerks to review applications for default judgments does not comply with New York law. In New York, clerks may grant default judgments only when the amount sought is a "sum certain" – that is, an amount easily verifiable from the papers submitted in support of the application. The amount of most consumer debts is not easily verifiable, because in order to determine how much, if anything, a person owes on a consumer debt, the court would typically have to review a complicated contract, with multiple amendments, and months' or years' worth of account statements. New York law requires that judges, not clerks, perform this kind of detailed review.<sup>103</sup>

## Pattern and Practice of Improper Debt Collection Among Law Firms

In New York, a small number of law firms commence the vast majority of debt collection cases. These firms employ questionable litigation practices that, viewed as a whole, reveal systemic problems in the judicial system.<sup>104</sup>

- Out of the 23 debt buyer law firms in the Court Sample, 11 were named in the *Pfau* case.
- 64% of debt buyers in the Court Sample were represented by one of five law firms in New York -- Cohen & Slamowitz, Forster & Garbus, Mel S. Harris and Associates, Mullooly, Jeffrey, Rooney & Flynn, or Rubin & Rothman.

Common observable practices by these law firms include:

- Filing lawsuits without having or being able to produce any proof;
- Seeking default judgments on the basis of false and/or legally inadequate affidavits;
- Hiring process serving agencies that routinely fail to serve people; and,
- Using heavy-handed settlement tactics at the courthouse against unrepresented people.

**Ms. W**, a 38-year-old woman from Brooklyn, was a victim of identity theft in 1999 and subsequently filed a police report. Nearly 10 years later, in 2008, she received a letter from a debt collection law firm claiming that she owed \$1000 on an AT&T Wireless account used from around 1999 to 2002, though she had never owned an AT&T Wireless phone. She contacted the law firm and confirmed that she had never lived at the address that it had on file for the alleged debt. She also faxed the law firm a copy of her police report and proof that she had been living at a different address at the time in question. She did not hear back from the law firm. Then, in January 2009, her husband went to their bank and discovered that their joint bank account had been frozen by the same law firm. She had never received any notice from the law firm that she was being sued or that they had obtained a default judgment against her. When she contacted the law firm, she was told that the information she had sent the firm was insufficient. However, after filing an order to show cause, Ms. W was able to get the judgment vacated and case dismissed.



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## **IV. RECOMMENDATIONS: BRING FAIRNESS AND JUSTICE TO DEBT COLLECTION IN NEW YORK**

“It’s the wild, wild west out there.”<sup>105</sup> Our report shows a desperate need for reforms in all areas of the debt buying industry and at all stages of the debt collection process.<sup>106</sup>

### **1. Prohibit debt buyers from filing lawsuits without evidence, and increase penalties for filing of meritless lawsuits.**

Immediate action is needed to address the problem of abusive debt collection lawsuits. At the local level, New York State should enact the Consumer Credit Fairness Act (CCFA). The proposed law would require court papers to include more information about the alleged debts, thereby preventing debt buyers from routinely filing meritless lawsuits and obtaining judgments on invalid debts. In addition, by reducing the statute of limitations in debt collection cases, CCFA would encourage debt buyers to file claims in a timely manner and better protect low- and moderate-income consumers from the excessive accumulation of interest charges and late fees.<sup>107</sup>

At the national level, Congress should amend the Fair Debt Collection Practices Act (FDCPA) to address the abuses described in this report. The FDCPA should explicitly prohibit debt buyers from filing lawsuits without having evidence to support their claims. Congress should enact tougher penalties for violations of the FDCPA by providing for injunctive relief and raising the amount of statutory damages, which have not changed in more than 30 years,<sup>108</sup> from \$1000 to \$4000 for individuals. Furthermore, statutory damages should be available *per violation*, not per case.

### **2. Aggressively regulate and monitor process servers.**

The high rate of default judgments in cases involving debt buyers is due in part to fraudulent practices in the process serving industry. The New York City Council, with the support of the New York City Department of Consumer Affairs (DCA), recently passed groundbreaking legislation intended to curb these unlawful practices. The DCA should implement strong regulations to carry out the new law and make enforcement of the new law an agency priority.

### **3. Step up government enforcement actions against debt collectors and law firms.**

We commend the New York State Attorney General’s office for the affirmative steps it has taken to combat abusive debt collection practices. The problems uncovered by the Attorney General indicate widespread, systemic abuses in the debt collection industry.<sup>109</sup> We urge the Attorney General to continue to take aggressive action against the debt collection industry.

We also urge the New York City Department of Consumer Affairs (DCA) to take aggressive action to combat debt buyer abuses. The DCA should conduct periodic audits of individual companies, and suspend and revoke licenses where warranted. The DCA should also enforce the law against entities that engage in illegal and abusive debt collection activities, including sewer service.

Finally, we encourage the Federal Trade Commission (FTC) to focus on reforming the debt buying industry. In 2009, the FTC held regional roundtable discussions on “Protecting Consumers in Debt Collection Litigation and Arbitration,” which focused on debt buyer lawsuits. The FTC should use the information gathered from these roundtables to address the problems described in this report.

## **4. Strengthen Courthouse Protections for People Sued by Debt Buyers.**

- **Ensure Judicial Review of Default Judgments.**

In the vast majority of cases, the debt buyers seek a default judgment against the person sued. Largely due to the increased volume of debt collection lawsuits, these applications for default judgments are reviewed by court clerks, not by judges, a practice that does not conform to New York law. Court clerks often are not attorneys, and they lack the legal training and expertise necessary to evaluate applications for default judgments in debt collection cases. As a result, debt buyers routinely obtain default judgments despite glaring legal deficiencies in their applications.

Our data suggests that the New York City Civil Court has issued thousands of default judgments on legally insufficient applications. To rectify this untenable situation, debt buyers should have to present proper documentation of their claims--ideally to judges, not clerks. Additional resources should be provided to the Civil Court to accomplish this.

- **Review Settlement Agreements for Fundamental Fairness.**

Our report demonstrates that people who make settlement agreements with debt buyers usually fare worse than people who default. Many people are pressured into unfair and unaffordable agreements in which they are doomed to fail, with dire consequences. Debt buyers must be required to produce evidence of the debt before the parties begin settlement negotiations. In addition, judges should review settlement agreements to ensure that they are fundamentally fair. Courts should not allow unrepresented people to enter into agreements that will leave them in a worse position than they would be in if a default judgment were enforced or allow people who only receive exempt income to enter into settlement agreements without understanding that their income cannot be collected by creditors.

- **Educate Judicial Personnel About the Debt Buying Industry and its Misuse of the Courts.**

In bringing the *Pfau* litigation, the Court has played a leadership role in the effort to remedy some of the worst debt collection practices. Additional resources should be provided to the Court to enhance efforts to educate members of the judiciary and key court personnel about the debt buying industry and its nationwide practice of flooding the courts with lawsuits based on little or no proof in hopes of obtaining a default judgment. Judicial personnel must be informed of these practices so they can properly scrutinize debt buyer lawsuits and prevent the courts from becoming an extension of the debt collection industry. To that end, we urge the Office of Court Administration to incorporate training on debt collection and debt industry practices into the mandatory annual trainings for judges, court attorneys, and clerks.

## **5. Increase Legal Representation and Resources for People Sued by Debt Buyers.**

In the limited instances when people sued by debt buyers are represented by counsel, it makes all the difference in the world. Debt buyers often walk away from cases rather than fight what they know will be a losing battle. The same occurs when unrepresented litigants assert their rights by requesting proof of the debt. Unfortunately, the vast majority of people sued have no access to legal counsel and no knowledge of their rights, leaving them vulnerable to the many abuses described in this report.

*Debt Weight* highlighted the need for legal services to be available in the courthouse to provide basic information and advice to unrepresented litigants. The Civil Legal Advice and Resource Office (CLARO) currently provides such services in Brooklyn, Queens, Manhattan and the Bronx for several hours per week. CLARO, however, has the capacity to serve less than 2% of the approximately 300,000 people sued each year by debt collectors in the New York City Civil Court. Funding for the legal services organizations that support CLARO should be increased and the program's hours expanded so that more people can access this valuable resource.

Many low-income people -- particularly those who are elderly, disabled or do not speak English -- need legal representation, not simply advice. Unfortunately, most legal services programs do not provide assistance in debt collection cases and low-income people cannot afford to pay private attorneys to represent them. New York City and State should find ways to provide more legal representation for low-income people sued by debt buyers. Certainly, local legal services offices should be funded to provide this assistance. Fee-shifting statutes, which would provide an award of attorney's fees for the successful defense of a debt collection lawsuit, could fund legal services programs and convince private attorneys to take on these cases at affordable rates.

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# APPENDICES

## APPENDIX A: Methodology

This study draws results from two data sets: (1) a 365-case sample of lawsuits brought by the 26 debt buyers that filed the greatest number of debt collection lawsuits in New York City between January 2006 and July 2008 (“Court Sample”); and (2) a 451-case sample of callers to NEDAP’s legal hotline who were sued by a creditor or debt buyer in 2008 (“Client Sample”).

To select the Court Sample, we identified the top 26 debt buyers using the Office of Court Administration’s eCourts system. The Chief Clerk at the New York City Civil Court provided us with the index numbers for the 441,143 cases filed by the 26 debt buyers from January 2006 through July 2008. We then designed a randomly selected, stratified, 365-case sample of debt buyer lawsuits. The sample size for each of the 26 debt buyers was in proportion to its overall share of cases in New York City. We then selected, for each debt buyer, cases from each borough in proportion to that borough’s share of all debt buyer lawsuits filed in New York City. For example, LVNV Funding, with 27,210 cases filed from January 2006 to June 2008, was allotted 25 cases in the sample: 5 from the Bronx, 8 from Brooklyn, 4 from Manhattan, 6 from Queens, and 2 from Staten Island. Gemini Asset Recoveries, which filed 1,855 cases during this period, was assigned 5 cases, 1 from each borough. Because we wanted to ensure that at least one Staten Island filing per debt buyer was included in the sample, Staten Island is over-represented, comprising 9% of the 365 case sample but only 4% of cases filed in New York City by these debt buyers during the study period.<sup>1</sup> We reviewed all selected case files by hand in 2009 for several key criteria and uniformity of data entry, and we recorded outcomes for 336 of the 365 cases.<sup>2</sup>

The Client Sample is a data set collected from NEDAP’s legal hotline. The Client Sample includes the case records of 451 hotline callers from 2008. These callers were chosen from NEDAP’s database because they had been sued by a creditor or debt buyer. When clients call NEDAP’s hotline they go through an intake process that records extensive case details and demographic information. Case details recorded include how the client was served; the nature of the client’s defenses to the lawsuit, if any; and the name of every original creditor, debt buyer and law firm involved in the client’s case. The demographic data collected include gender, race, and age, among others. All of NEDAP’s hotline callers must meet certain eligibility criteria to receive assistance.<sup>3</sup> In addition, they are self-selected as they chose to seek help from a legal services office. As a result, these callers’ cases may not be fully representative of all debt buyer lawsuits in New York City.

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<sup>1</sup> The other four boroughs are accurately represented in the sample, with Brooklyn accounting for 31%, Queens at 24%, the Bronx at 20%, and Manhattan at 16%, all within 3% of the true distribution.

<sup>2</sup> At the time of review, the other 29 cases remained pending with no resolution.

<sup>3</sup> NEDAP hotline clients must live in New York City and may have a maximum income of 250% of the federal poverty level.

## APPENDIX B: List of Debt Buyers Included in Court Sample, by County

	County					
<b>Plaintiff</b>	<b>Bronx</b>	<b>Brooklyn</b>	<b>Manhattan</b>	<b>Queens</b>	<b>Staten Island</b>	<b>Total</b>
Arrow Financial Services	3	5	2	4	1	15
Asset Acceptance	6	10	4	8	2	30
Atlantic Credit & Finance	1	2	1	2	1	7
CACH—Collect America <sup>1</sup>	2	3	2	2	1	10
CACV—Collect America	1	1	1	1	1	5
Cavalry Portfolio Services	1	2	1	2	1	7
Collins Financial Services	1	1	1	1	1	5
Colorado Capital Investments	1	1	1	1	1	5
Credigy Receivables	1	2	1	2	1	7
Elite Recovery Services	1	1	1	1	1	5
Erin Capital Management	3	6	3	4	1	17
Gemini Asset Recoveries	1	1	1	1	1	5
Independence Receivables	1	1	1	1	1	5
LR Credit (all entities)	10	15	8	12	5	50
LVNV Funding	5	8	4	6	2	25
Metro Portfolios	3	5	2	4	1	15
Midland Funding	8	12	7	10	3	40
North Star Capital Acquisition	2	3	2	2	1	10
NY Financial Services	3	5	2	4	1	15
Palisades Collection	5	8	4	6	2	25
Pinpoint Technologies	3	5	2	4	1	15
Portfolio Recovery Associates	2	3	2	2	1	10
RAB Performance Receivables	2	3	2	2	1	10
RJM Acquisitions	1	1	1	1	1	5
Rushmore Recoveries	3	5	2	4	1	15
Worldwide Asset Purchasing	1	2	1	2	1	7
<b>Total</b>	<b>71</b>	<b>111</b>	<b>59</b>	<b>89</b>	<b>35</b>	<b>365</b>

<sup>1</sup> Collect America changed its name to SquareTwo Financial in December, 2009. *See* Press Release, Square Two Financial, Square Two Financial, Formerly Collect America, Unveils New Name and Look (Dec. 16, 2009), *available at* <http://www.squaretwofinancial.com/about-us/press/corporate-news/>.

## APPENDIX C: Summary of Court Statistics

### NEW YORK CITY CIVIL COURT FILINGS STATISTICS

YEAR	KINGS	QUEENS	BRONX	NEW YORK	RICHMOND	TOTAL CITY WIDE
2008	TOTAL: 192,567 NF: 44,670 CC: 95,048	TOTAL: 181,799 NF: 79,264 CC: 80,887	TOTAL: 131,566 NF: 54,265 CC: 65,072	TOTAL: 84,500 NF: *29,476 CC: *41,634	TOTAL: 29,087 NF: 11,334 CC: 16,102	TOTAL: 619,519 NF: *219,009 CC: *298,743
2007	TOTAL: 203,677 NF: 61,738 CC: 95,871	TOTAL: 179,334 NF: 79,491 CC: 81,317	TOTAL: 107,932 NF: 32,762 CC: 64,000	TOTAL: 81,127 Case type data not available	TOTAL: 26,209 NF: 9,189 CC: 15,344	TOTAL: 598,276
2006	TOTAL: 214,861 NF: 65,835 CC: 106,240	TOTAL: 181,706 NF: 74,973 CC: 85,234	TOTAL: 113,164 NF: 34,054 CC: 73,894	TOTAL: 81,932 Case type data not available	TOTAL: 26,009 NF: 10,637 CC: 13,942	TOTAL: 617,672
2005	166,514	141,752	80,368	70,282	18,811	477,727
2004	133,334	129,397	57,271	66,486	12,981	399,469
2003	128,428	125,475	86,950	74,591	10,734	426,178
2002	98,787	107,121	70,172	55,047	8,467	339,594
2001	81,608	67,816	41,811	49,051	7,261	247,547
2000	70,278	54,513	37,374	44,184	6,296	212,645
1999	72,540	57,318	27,234	44,891	6,025	208,808
1998	77,751	56,640	27,658	45,680	7,191	214,920
1997	83,569	53,086	26,396	46,448	6,919	216,410
1996	75,351	46,438	23,861	45,765	6,377	197,792
1995	72,244	37,870	23,513	46,672	6,082	192,437
1994	70,980	38,549	22,273	48,098	6,070	187,970
1993	80,353	38,194	21,959	50,594	6,323	197,423
1992	80,943	44,605	24,946	56,947	6,897	214,338
1991	80,600	49,577	26,096	66,458	7,671	230,402
1990	81,795	50,117	29,378	75,613	7,330	244,233
1989	71,459	47,124	27,556	76,220	6,258	229,117
1988	73,108	44,988	27,005	71,648	5,647	222,396
1987	84,405	50,721	29,234	81,696	6,419	252,475
1986	82,343	43,664	30,156	97,756	6,387	260,306
1985	80,058	42,265	28,397	102,959	6,380	260,059
1984	75,294	40,289	15,485	102,428	6,312	250,202

NF - No Fault actions filed

CC - Consumer Credit actions filed

\*New York County case management system is unable to generate statistics, therefore stats are estimates based on ratios from other counties. Statistics will be available from 6/9/08 on.

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## ENDNOTES

<sup>1</sup> See Appendix B for a list of debt buyers included in the Court Sample.

<sup>2</sup> See, e.g., National Consumer Law Center, *Fair Debt Collection* 7 (6<sup>th</sup> ed. 2008) [hereinafter *Fair Debt Collection Manual*] (noting that as accounts become more delinquent, they are heavily discounted and a debt buyer typically pays only pennies on the dollar); U.S. Government Accountability Office, *Credit Cards: Fair Debt Collection Practices Act Could Better Reflect the Evolving Debt Collection Marketplace and Use of Technology* 29 (Sept. 2009) [hereinafter *GAO Report*], available at <http://www.gao.gov/new.items/d09748.pdf>.

<sup>3</sup> GAO Report, *supra* note 2, at 26.

<sup>4</sup> *Id.* at 29.

<sup>5</sup> *Id.*

<sup>6</sup> “Charge off” is an accounting term for retail credit loans that have been delinquent or past due for 180 days and which the creditor treats as a loss.

<sup>7</sup> Caroline Mayer, *As Debt Collectors Multiply, So Do Consumer Complaints*, Wash. Post, July 28, 2005, available at <http://www.washingtonpost.com/wp-dyn/content/article/2005/07/27/AR2005072702473.html>; TheDebtTrader.com, *Debt Industry Overview*, (2000), at <http://www.thedebttrader.com/indushis.html>.

<sup>8</sup> Federal Deposit Insurance Corporation, *An Examination of the Banking Crises of the 1980s and Early 1990s* 100 (1997), available at <http://www.fdic.gov/bank/historical/history/vol1.html>.

<sup>9</sup> Lee Davison, *The Resolution Trust Corp. and Congress, 1989-1993, Part II: 1991-1993*, 18 FDIC Banking Review No. 3, 23 (2006), available at <http://www.fdic.gov/bank/analytical/banking/index.html>.

<sup>10</sup> Mayer, *supra* note 7.

<sup>11</sup> TheDebtTrader.com, *supra* note 7.

<sup>12</sup> U.S. Government Accountability Office, *Credit Cards: Increased Complexity in Rates and Fees Heightens Need for More Effective Disclosures to Consumers* 57 (Sept. 2006), available at <http://www.gao.gov/new.items/d06929.pdf>.

<sup>13</sup> Jose A. Garcia, Demos, *Borrowing to Make Ends Meet: The Rapid Growth of Credit Card Debt in America* (2007), available at <http://www.demos.org/pubs/stillborrowing.pdf>.

<sup>14</sup> *Id.* (finding that medical debt and unemployment were significant contributors to household credit card debt loads); see also Jose Garcia, Tamara Draut, Demos, *The Plastic Safety Net: How Households are Coping in a Fragile Economy* (2009), available at <http://www.demos.org/pubs/psn.pdf>.

<sup>15</sup> Rishawn Biddle, *Credit Cards: Defaults Force Issuers to Beat a Retreat*, 25 Los Angeles Bus. J. 43 (2003), available at <http://www.thefreelibrary.com/Credit+cards:+defaults+force+issuers+to+beat+a+retreat-a0109847989>.

<sup>16</sup> Margo Anderson, *From Subprime Mortgages to Subprime Credit Cards*, 19 Communities & Banking 4, 23 (Fall 2008).

<sup>17</sup> Federal Reserve Board, *Charge-Off and Delinquency Rates on Loans and Leases at Commercial Banks*, at <http://www.federalreserve.gov/releases/chargeoff/> (last updated Feb. 23, 2010).

<sup>18</sup> Paul Legrady, *Welcome to a New World of Debt*, 11 Collections & Credit Risk 5, 26 (May 2006).

<sup>19</sup> *Id.*

<sup>20</sup> See Asset Acceptance, Inc., Annual Reports (Form 10-K) (2001-2006); Asta Funding, Inc., Annual Reports (Form 10-K) (2001-2006); Encore Capital Group, Inc., Annual Reports (Form 10-K) (2001-2006); Portfolio Recovery Associates, Inc., Annual Reports (Form 10-K) (2001-2006).



- <sup>21</sup> *Standards for Insuring the Security, Confidentiality, Integrity and Protection of Customer Records and Information: Proposed Rule and Request For Public Comment on 16 C.F.R. Part 314 By the Federal Trade Commission* (2001) (comments by the Debt Buyers Association), available at <http://www.ftc.gov/privacy/glbact/safeguard/dba.htm>.
- <sup>22</sup> See, e.g., Asset Acceptance, Inc., Annual Report (Form 10-K) 45 (2009); Asta Funding, Inc., Annual Report (Form 10-K) 29 (2009); Portfolio Recovery Associates, Inc., Annual Report (Form 10-K) 56 (2009); see also Press Release, Encore Capital Group, Inc., Encore Capital Group Announces Fourth Quarter and Full Year 2009 Results and New Revolving Credit Facility (Feb. 8, 2010), available at <http://phx.corporate-ir.net/phoenix.zhtml?c=115920&p=irol-newsArticle&ID=1385087&highlight=>.
- <sup>23</sup> Jeremy Simon, *For Credit Card Issuers, There's Plenty of Room at the Top*, June 6, 2006, at <http://www.creditcards.com/credit-card-news/us-bank-credit-card-issuers-acquisitions-1264.php>.
- <sup>24</sup> Mayer, *supra* note 7.
- <sup>25</sup> Will Shanley, *KRG Capital Purchases Collect America*, The Denver Post, Nov. 29, 2005, available at [http://www.denverpost.com/business/ci\\_3260145](http://www.denverpost.com/business/ci_3260145). Collect America has an unusual business model: the company licenses proprietary collection software to law firms that collect debts placed with them by Collect America, effectively turning the law firms into Collect America's franchisees. Interestingly, these law firms are also barred from collecting debts not placed by Collect America unless those debts were purchased from a short list of suppliers approved by the company. See Complaint, *Collect Am. Ltd. v. Law Office of Curtis O Barnes, P.C.*, 2005-CV-1803 (D. Colo. 2005).
- <sup>26</sup> See Radian Group Inc., About Radian, at <http://www.radian.biz/page?name=AboutUs> (stating that Radian has a 29% equity interest in Sherman Financial Group) (last visited April 11, 2010); *Waite v. LVNV Funding*, No. 09-00295-KD-C, 2009 U.S. Dist. LEXIS 48233 (S.D. Ala. Jun. 9, 2009).
- <sup>27</sup> See Sallie Mae, SLM Corporation (Sallie Mae) Trademarks and Service Marks at <http://www.salliemae.com/about/copyright.htm> (last visited April 11, 2010); Bethany McClean, Sallie Mae's Private Side, *Fortune* (Apr. 30, 2007), available at [http://money.cnn.com/magazines/fortune/fortune\\_archive/2007/05/14/100008715/index.htm](http://money.cnn.com/magazines/fortune/fortune_archive/2007/05/14/100008715/index.htm).
- <sup>28</sup> Caitlin Devitt, *So Sue'Em. Debt Buyers Are Increasingly Going to Court to Increase Recoveries and Justify Prices Being Paid for Debt Portfolios in a Demand Driven Market*, 12 Collections and Credit Risk 7, 32 (Jul. 2007), available at <http://www.highbeam.com/doc/1G1-166618590.html>.
- <sup>29</sup> GAO Report, *supra* note 2, at 24; John Russo, *Attorneys Buying Bad Debt?*, Debt 3 (Nov. 1, 2008), available by subscription at <http://www.highbeam.com/doc/1P3-1632099381.html> (copy on file with authors). Russo recommends that any law firm interested in buying debt should "get started by setting up an LLC or a corporation as the debt buying entity" because "many states don't allow attorneys to own or have a vested interest in their files." See also Devitt, *supra* note 28, at 32 (stating that in 2007, Gary Wood, President of Collins Financial, estimated that his company resold 20% to 25% of its debt portfolios to a network of 2,000 attorneys).
- <sup>30</sup> Devitt, *supra* note 28; Kit Ladwig, *Hot Prospects and Hot Tamales*, Collections & Credit Risk (May 2003).
- <sup>31</sup> Simon, *supra* note 23.
- <sup>32</sup> Darren Waggoner, *Encore Capital Reports Uptick in Revenue, Collections*, Collections & Credit Risk (Feb. 8, 2010), available at <http://www.collectionscreditrisk.com/news/encore-capital-reports-uptick-in-revenue-collections-3000633-1.html>.
- <sup>33</sup> Encore Capital Group, Form 8-K, Credit Agreement, Exhibit 10.1, Feb. 8, 2010, available at <http://www.sec.gov/Archives/edgar/data/1084961/000119312510024359/dex101.htm> (detailing in the Commitment Schedule amounts of revolving loan commitments made by individual lenders to Encore Capital Group).
- <sup>34</sup> Fair Debt Collection Manual, *supra* note 2, at 9 (citing case law pertaining to what debt buyers buy). See also GAO Report, *supra* note 2, at 44-45; Federal Trade Commission, *Collecting Consumer Debts: The Challenges of Change* 22-23 (Feb. 2009) [hereinafter FTC Report], available at <http://www.ftc.gov/bcp/workshops/debtcollection/dcwr.pdf>.
- <sup>35</sup> FTC Report, *supra* note 34, at 19; GAO Report, *supra* note 2, at 44.; see also Jim Dwyer, *In Civil Court, One Nation, Under Debt*, N.Y. Times, Oct. 10, 2008, at A19, available at <http://www.nytimes.com/2008/10/11/nyregion/11about.html>.

- <sup>36</sup> Randy Nicola, *9 Keys to Successful Debt Buying*, Debt3, at 5 (May 1, 2007) (quoting Tony Jackson, vice president of sales at Collins Financial Services as saying: “Media availability can be spotty.”); *Collecting Consumer Debts: The Challenges of Change: Request for Comments, Original Papers, and Participation By the Federal Trade Commission* (2007) (comments by Barbara A. Sinseley on behalf of Debt Buyers’ Association) (stating: “In fact, it is common for a debt buyer initially to receive only a computerized summary of the creditor’s business records...”).
- <sup>37</sup> FTC Report, *supra* note 34, at 22-23; *Protecting Consumers in Debt Collection Litigation and Arbitration: A Roundtable Discussion by the Federal Trade Commission* (2009) (public comments by David B. Mertz, President, Compliance Security Partners, LLC), *available at* <http://www.ftc.gov/os/comments/debtcollectroundtable2/544507-00006.pdf>.
- <sup>38</sup> See Account Sale Agreement Between Capital One Bank and Centurion Capital Corporation (Dec. 8, 2005) (redacted copy on file with the authors); Purchase and Sale Agreement Between Citibank (South Dakota), N.A. and Unifund CCR Partners (Feb. 28, 2005) (copy on file with the authors).
- <sup>39</sup> GAO Report, *supra* note 2, at 28, 44-45; *see also* Account Sale Agreement Between Capital One Bank and Centurion Capital Corporation, *supra* note 38; Purchase and Sale Agreement Between Citibank (South Dakota), N.A. and Unifund CCR Partners, *supra* note 38.
- <sup>40</sup> GAO Report, *supra* note 2, at 44-45.
- <sup>41</sup> *Id.* at 28 (citing a debt broker and concluding: “[T]he issuer’s underwriting criteria, the average account balance, and the amount of documentation available all can affect the price of a portfolio.”).
- <sup>42</sup> See Portfolio Recovery Associates, Inc., Annual Report (Form 10-K) (Mar. 1, 2007); Asset Acceptance, Inc., Annual Report (Form 10-K) (Feb. 27, 2006).
- <sup>43</sup> Devitt, *supra* note 28.
- <sup>44</sup> GAO Report, *supra* note 2, at 28-29; Collections and Credit Risk, *Debt Portfolio Prices Edge Higher* (Mar. 23, 2010), *at* <http://www.collectionscreditrisk.com/news/debt-portfolio-prices-edge-higher-3001103-1.html>.
- <sup>45</sup> Robert Berner and Brian Grow, *Prisoners of Debt*, Business Week, Nov. 12, 2007, *available at* [http://www.businessweek.com/magazine/content/07\\_46/b4058001.htm](http://www.businessweek.com/magazine/content/07_46/b4058001.htm); David Streitfeld, *You’re Dead? That Won’t Stop the Debt Collector*, N.Y. Times, Mar. 4, 2009, at A1, *available at* [http://www.nytimes.com/2009/03/04/business/04dead.html?\\_r=1&scp=1&sq=dead%20newest%20frontier&st=cse](http://www.nytimes.com/2009/03/04/business/04dead.html?_r=1&scp=1&sq=dead%20newest%20frontier&st=cse).
- <sup>46</sup> Kaulkin Ginsberg, *Getting Current on Pricing in the U.S. Credit Card Debt Purchasing Market*, InsideARM, Mar. 24, 2009, *at* <http://www.insidearm.com/go/arm-analysis/getting-current-on-pricing-in-the-u-s-credit-card-debt-purchasing-market>.
- <sup>47</sup> GAO Report, *supra* note 2, at 29.
- <sup>48</sup> Berner and Grow, *supra* note 45.
- <sup>49</sup> Press Release, Federal Trade Commission, FTC Sues Subprime Credit Card Marketing Company for Deceptive Credit Card Marketing (June 10, 2008), *available at* <http://www.ftc.gov/opa/2008/06/compucredit.shtm>.
- <sup>50</sup> Portfolio Recovery Associates, Inc., Annual Report (Form 10-K) 15 (Feb. 28, 2008).
- <sup>51</sup> See Asset Acceptance, Inc., Annual Report (Form 10-K) (2001-2006); Asta Funding, Inc., Annual Report (Form 10-K) (2001-2006); Encore Capital Group, Inc., Annual Report (Form 10-K) (2001-2006); Portfolio Recovery Associates, Inc., Annual Report (Form 10-K) (2001-2006).
- <sup>52</sup> Encore Capital Group, *Leveraging Intellectual Capital*, Presentation to Investors (June 9, 2009) (written materials on file with the authors).
- <sup>53</sup> Patrick Lunsford, *More Payment Plans and Legal Collections, Say ARM Companies in Survey*, InsideArm, Jan. 27, 2009, *available at* <http://www.insidearm.com/go/arm-news/-more-payment-plans-and-legal-collections-say-arm-companies-in-survey>.
- <sup>54</sup> Brendan Conway, *Collection Agencies Call Up Revenue in Recession*, Wall St. J., June 24, 2009, at B3B.
- <sup>55</sup> Devitt, *supra* note 28, at 32 (quoting Asta’s chief executive officer).
- <sup>56</sup> FTC Report *supra* note 34, at 55.

- <sup>57</sup> See New York City Civil Court Filing Statistics 1984 – 2008, attached at Appendix C. See also Urban Justice Center, *Debt Weight: The Consumer Credit Crisis in New York City and its Impact on the Working Poor* (Oct. 2007) [hereinafter *Debt Weight*], available at [http://www.urbanjustice.org/pdf/publications/CDP\\_Debt\\_Weight.pdf](http://www.urbanjustice.org/pdf/publications/CDP_Debt_Weight.pdf); Dwyer, *supra* note 35; New York City Bar Association, *Out of Service: A Call to Fix the Broken Process Service Industry* (April 2010), available at <http://www.nycbar.org/pdf/report/uploads/ProcessServiceReport4-10.pdf>.
- <sup>58</sup> See, e.g., *Debt Weight*, *supra* note 57, at 1; New York City Bar Association, *supra* note 57, at 2.
- <sup>59</sup> FTC Report *supra* note 34, at 56-57 (“Consumer groups report that consumers frequently do not appear to contest debt collection lawsuits because they have not been properly served, and, if they do not appear, the court enters a default judgment.”); New York Appleseed, *Due Process and Consumer Debt: Eliminating Barriers to Justice in Consumer Credit Cases*, at 12 (2010) [hereinafter *Appleseed Report*], available at <http://ny.appleseednetwork.org/LinkClick.aspx?fileticket=dFHdRj22CXY%3d&tabid=252> (“Sewer service, or the intentional failure to serve a defendant, remains the single most effective barrier to court.”).
- <sup>60</sup> MFY Legal Services, Inc., *Justice Disserved: A Preliminary Analysis of the Exceptionally Low Appearance Rate by Defendants in Lawsuits Filed in the Civil Court of the City of New York 2* (June 2008) [hereinafter *MFY Report*], available at [http://www.mfy.org/Justice\\_Disserved.pdf](http://www.mfy.org/Justice_Disserved.pdf).
- <sup>61</sup> *Appleseed Report*, *supra* note 59, at 12.
- <sup>62</sup> Frank M. Tuerkheimer, *Service of Process in New York City: A Proposed End to Unregulated Criminality*, 72 Colum. L. Rev. 847 (1972); N.Y. Attorney General, N.Y. City Dep’t of Consumer Affairs, and The N.Y. City Dep’t of Investigations, *A Joint Investigative Report into the Practice of Sewer Service in New York City* (1986) [hereinafter *N.Y. Attorney Gen. Investigative Report*]; *Barr v. Dep’t of Consumer Affairs*, 70 N.Y.2d 821, 822-23 (1987) (discussing “a continuing and pervasive problem of unscrupulous service practices by licensed process servers”); Matthew Goldstein, *Process Server’s License Revoked by Consumer Agency for Fraud*, N.Y. Law Journal, Feb. 7, 1996, at 1; *MFY Report*, *supra* note 60, at 4; David Caruso, *The Associated Press, Court Papers Went Undelivered; Process Server Faces Charges*, N.Y. Law Journal, April 15, 2009, at 1:4 (reporting on American Legal Process CEO William Singer’s guilty plea of scheme to defraud in the first degree); Press Release, Office of Attorney General, Cuomo Announces Guilty Plea of Process Server Company Owner Who Denied Thousands of New Yorkers Their Day in Court (Jan. 15, 2010), available at [http://www.ag.ny.gov/media\\_center/2010/jan/jan15a\\_10.html](http://www.ag.ny.gov/media_center/2010/jan/jan15a_10.html); Ray Rivera, *Council Seeks to Crack Down on Process Servers Who Lie*, N.Y. Times, Feb. 26, 2010, available at <http://www.nytimes.com/2010/02/27/nyregion/27sewer.html?scp=1&sq=Council%20Seeks%20to%20Crack%20Down%20on%20Process%20Servers%20Who%20Lie&st=cse>.
- <sup>63</sup> See, e.g., An Exploratory Public Hearing on Process Server Practices in New York City by the New York City Department of Consumer Affairs (June 13, 2008) [hereinafter *DCA Process Server Hearing Transcript or Transcript*] (transcript on file with authors), at 188-189 (testimony of Douglas Preston Riley).
- <sup>64</sup> See, e.g., *id.* at 109 (testimony of Alex Shafran); *id.* at 134 (testimony of Jay Brodsky); *id.* at 198 (testimony of Chris Rossi); *id.* at 207 (testimony of Bob Gulinello). Under New York law (CPLR § 308), a process server must serve papers in one of three ways. The process server can effect “personal service” by giving the summons and complaint directly to the defendant. The process server can effect “substitute service” by giving the summons and complaint to a trustworthy individual at the defendant’s home or place of employment and also sending a copy of the summons and complaint to the defendant via first class mail. Finally, if the process server goes to the defendant’s home or place of business multiple times and is unable to find the defendant or a person who will accept service for the defendant, the process server may resort to “nail and mail service.” This method of service involves affixing one copy of the summons and complaint to the door of the defendant’s residence or place of employment and mailing a second copy to the defendant via first class mail. A process server is required to employ “due diligence” to serve the defendant via personal or substitute service before resorting to nail and mail service.
- <sup>65</sup> N.Y. Attorney Gen. Investigative Report, *supra* note 62, at 2.
- <sup>66</sup> *Id.*
- <sup>67</sup> See, e.g., *DCA Process Server Hearing Transcript*, *supra* note 63, at 170; *id.* at 187 (testimony of Douglas Preston Riley).
- <sup>68</sup> See, e.g., *id.* at 158 (testimony of Samson Newman).

- <sup>69</sup> Robert Martin, District Council 37 Municipal Employees Legal Services, *Where's The Proof? When Debt Buyers are Asked to Substantiate Their Claims in Collection Lawsuits Against NYC Employees and Retirees, They Don't*, (December 2009) (finding that debt buyers were unable to substantiate their claims in 94.5% of cases reviewed); FTC Report *supra* note 34, at 56 (“Debt collectors have insufficient evidence at the time they file a complaint to show that they are seeking to recover the correct amount from the right consumer”); *see also* Appleseed Report, *supra* note 59, at 23-24; John Collins Rudolph, *Pay Garnishments Rise as Debtors Fall Behind*, N.Y. Times, Apr. 1, 2010, at B1, *available at* <http://www.nytimes.com/2010/04/02/business/economy/02garnish.html>; Jim Dwyer, *Hello Collections? The Worm Has Turned*, N.Y. Times, Nov. 29, 2009, *available at* <http://www.nytimes.com/2009/11/29/nyregion/29about.html>; Dwyer, *supra* note 35.
- <sup>70</sup> GAO Report, *supra* note 2, at 28.
- <sup>71</sup> Appleseed Report, *supra* note 59, at 28.
- <sup>72</sup> *See, e.g., Citibank (S.D.), N.A. v. Martin*, 11 Misc.3d 219 (Civ. Ct. N.Y. Co. 2005) (discussing standards of proof in consumer credit cases).
- <sup>73</sup> Appleseed Report, *supra* note 59, at 1 (“Debtor defendants are virtually never represented by counsel.”); Rudolph, *supra* note 69.
- <sup>74</sup> Response to FOIL Request to New York Office of Court Administration, Sept. 3, 2009.
- <sup>75</sup> FTC Report, *supra* note 34, at 56. (“Consumer groups also assert that consumers who are not represented by counsel may not know what evidence to present or how to present it.”); Appleseed Report, *supra* note 59, at 2, 21-23 (“Since all creditors are represented by counsel and the defenses available to debtors can be complex, the gross disparity in representation means that debtors almost never raise the overwhelming majority of legitimate defenses available to them.”); Rudolph, *supra* note 69 (“‘If the consumers were armed with more education about how to defend themselves against these debts, they’d be successful,’ said Jeffrey Lipman, a civil magistrate in Des Moines.”).
- <sup>76</sup> Rudolph, *supra* note 69.
- <sup>77</sup> FTC Report *supra* note 34, at 57 (“In short, the view of consumer groups concerning debt collection litigation was aptly described in a *Boston Globe* article: ‘Collectors are almost never asked to prove the debts they claim; defendants are rarely informed of their rights. And debtors, usually too strapped to afford a lawyer, have to contend with this legal mismatch alone.’”); Appleseed Report, *supra* note 59, at 18 (“Plaintiffs’ counsel may pressure unrepresented defendants into unfavorable settlements.”); Rudolph, *supra* note 69.
- <sup>78</sup> Martin, *supra* note 69, at 4; FTC Report *supra* note 34, at 57; Rudolph, *supra* note 69.
- <sup>79</sup> A sample complaint states that: “said action is based upon a Retail Charge Account Agreement executed by defendant with FIRST USA BANK.” The phrase “retail charge account” is used by other debt buyers to describe a credit agreement between a consumer and individual retailer, for example, Best Buy or Target, but the Harris Firm uses it to refer to any type of consumer debt.
- <sup>80</sup> Leucadia National Group (LUK), a publicly traded, highly diversified holding company that operates essentially like a private equity group, owns 19 different “LR Credit” companies, which are listed in Exhibit 21 of Leucadia’s annual report. Leucadia National Corp., Annual Report (Form 10-K Exhibit 21) (Feb. 27, 2009).
- <sup>81</sup> Pinpoint Technologies appears to be a debt buying shell company of the Harris Firm. The officer listed for Pinpoint Technologies in the New York State corporate filings database is an “S98-SHarri” located at the address of the Harris Firm. Related companies Pinpoint Technologies Too and 3 are owned by partners of the Harris firm.
- <sup>82</sup> We were unable to find information on Rushmore Recoveries’ ownership.
- <sup>83</sup> However, according to the website of the New York City DCA, a Pinpoint Technologies Too, LLC and a Pinpoint Technologies 3, LLC are licensed debt collection agencies.
- <sup>84</sup> Appleseed Report, *supra* note 59, at 2, 24.
- <sup>85</sup> Martin, *supra* note 69, at 3, 7; FTC Report, *supra* note 34, at 57; Appleseed Report, *supra* note 59, at 2, 24; *see also* Rudolf, *supra* note 66.

<sup>86</sup> National Consumer Law Center, *Fair Credit Reporting*, 5, 114 (5<sup>th</sup> ed. 2002); *see also* Appleseed Report, *supra* note 59, at 2; Kristin McNamara, *Bad Credit Derails Job Seekers*, Wall St. J., Mar. 16, 2010, at D6.

<sup>87</sup> *See* Appendix A for the complete methodology.

<sup>88</sup> At the time of review, the remaining 29 cases were pending with no activity.

<sup>89</sup> A total of 457,322 cases filed by our twenty six debt buyers from January 2006 through July 2008, multiplied by .932—the percentage of successful cases in our sample—equals 426,224 likely successful cases, multiplied by our median amount awarded of \$2,577.12, equals \$1,098,430,663.

<sup>90</sup> In the remaining 21% of cases, it was impossible to determine whether the person was properly served.

<sup>91</sup> A case was classified as clearly meritless if it had any of the following characteristics: the debt was the result of mistaken identity or identity theft, the debt had been previously paid, the debt had been discharged in bankruptcy, or the statute of limitations on the debt had expired. *See* Appendix A for the complete methodology.

<sup>92</sup> Low- and moderate-income communities are communities in which the median family income was less than \$42,720 per year in 1999. *See* Federal Financial Institutions Examination Council, U.S. Census and HUD Estimated MSA Median Family Incomes for 1999 HMDA Reports, at <http://www.ffiec.gov/hmda/pdf/msa99inc.pdf>.

<sup>93</sup> The poverty level is defined as income of \$8,501 per year for an individual and \$16,895 for a family of four with two adults and two children. *See* U.S. Census Bureau, Poverty: 1999 2 (May 2003), available at <http://www.census.gov/prod/2003pubs/c2kbr-19.pdf>.

<sup>94</sup> N.Y. City Admin. Code § 20-488 (2009) (stating that the City Council's stated purpose in enacting a licensing requirement was to "protect the interests, reputations and fiscal well-being of the citizens of this city against those agencies who would abuse their privilege of operation.").

<sup>95</sup> The definition is: "a buyer of delinquent debt who seeks to collect such debt either directly or through the services of another by, including but not limited to, initiating or using legal processes or other means to collect or attempt to collect such debt." N.Y. City Admin. Code § 20-489 (2009). The Committee Report evidences the New York City Council's intent to clarify, not alter, existing law. It indicates that the bill is aimed at "clarifying the definition of debt collection agency . . . to address debt buyer arguments . . . that once they contract collection of the debt to another party they are engaged in 'passive' collection and as such are not required to be licensed as a debt collection agency by DCA." Robert Newman, Alix Pustilnik, Committee Report of the Governmental Affairs Division 7-8 (Feb. 25, 2009) (on file with authors). *See also* *Kuhne v. Cohen & Slamowitz, LLP*, 579 F.3d 189, 196-97, (2d Cir. 2009) ("The text and legislative history of this amendment make clear that its definition of debt collection agency includes those entities . . . that have made the argument that they are not subject to the licensing requirements because they themselves do not engage directly in the collection activities.").

<sup>96</sup> The process of obtaining a debt collection license requires filling out a relatively simple application, available online, and paying a \$150 fee for a two-year license.

<sup>97</sup> Licensed firms obtained default judgments in 72.6% of cases, whereas unlicensed firms obtained default judgments in 86.7% of cases.

<sup>98</sup> Appleseed Report, *supra* note 59, at 28.

<sup>99</sup> Jonathan D. Glater, *In a Downturn, More Act as Their Own Lawyers*, N.Y. Times, April 10, 2009, at B1, available at <http://www.nytimes.com/2009/04/10/business/10lawyer.html?scp=1&sq=In%20a%20Downturn,%20More%20Act%20as%20Their%20Own%20Lawyers&st=cse>.

<sup>100</sup> *See also* Appleseed Report, *supra* note 59, at 28-29 ("The percentage of defendants who default on the settlement agreement also presents a sobering statistic.").

<sup>101</sup> Debt Weight, *supra* note 57, at 18-22.



- <sup>102</sup> Under New York law, a debt buyer must provide “proof of the facts constituting the claim, the default and the amount due” in order to obtain a default judgment. N.Y. C.P.L.R. § 3215(f) (McKinney, 2010). This proof must be established by an affidavit from a party who has personal knowledge of the facts of the case. Debt buyers attempt to meet this requirement by submitting an affidavit from one of their employees. However, these employees have no connection to the original creditor, do not have access to the original creditor’s books and records, and lack personal knowledge of the facts to which they attest. These affidavits are, by definition, insufficient to meet even the minimal requirements necessary for a default judgment.
- <sup>103</sup> See *Reynolds Securities, Inc. v. Underwriters Bank & Trust Co.*, 44 N.Y.2d 568 (1978) (explaining that a clerk may not enter a default judgment in a case in which damages cannot be determined without extrinsic proof). A recent directive issued by the Civil Court of the City of New York, DRP-182, does not solve this problem. This directive requires debt buyers, when applying for a default judgment, to supply the clerk with additional affidavits in support of their claims. The required affidavits, however, are so vague as to be virtually meaningless.
- <sup>104</sup> In many cases these firms appear to be connected to debt collection companies, with the same address in many cases.
- <sup>105</sup> Isaac Wolf, *FTC Opens Initial Study of Consumer Debt Purchasers*, Scripps Howard News Service, Jan. 7, 2010, at <http://public.shns.com/content/ftc-opens-initial-study-consumer-debt-purchasers> (quoting Ira Rheingold, executive director of the National Association of Consumer Advocates).
- <sup>106</sup> Members of the debt buying industry have proposed “self-regulation” as the solution to the admitted problems associated with the industry. See Darren Waggoner, *An Industry Flight to Action: Leaders in Collections and Debt Buying Take a Long-Term Look at the Merits of Self-Regulation*, Collections and Credit Risk (June 1, 2008), available at <http://www.highbeam.com/doc/1G1-180513925.html> (quoting David Paris, chief executive officer of Zenith Acquisition Corp., the parent company of North Star Capital Acquisition, a debt buyer in our sample, as saying: “If we can demonstrate that we are moving in the right direction, people will give us more latitude . . . If we do nothing, regulators might feel like they should do something.”). Leading debt collection trade groups are also undertaking a major lobbying effort to convince state and federal governments that less regulation, not more, is what is needed. In fact, ACA International (formerly the American Collectors Association), the primary trade organization for debt collectors and debt buyers, opened a full-time Washington lobbying office in March 2008, and the National Association of Retail Collection Attorneys (NARCA), hired a public relations firm to spread its message on Capitol Hill. See David Streitfeld, *Debt Collectors Try to Put on a Friendlier Face*, N.Y. Times, Mar. 14, 2008, available at <http://www.nytimes.com/2008/03/14/business/14collect.html?scp=1&sq=Debt%20Collectors%20Try%20to%20Put%20on%20a%20Friendlier%20Face&st=cse>.
- <sup>107</sup> The current law gives the creditor or debt buyer six years from the date of default to file a lawsuit against the borrower. CCFA would reduce this period to three years and would also bar debt collectors from collecting debts on which the statute of limitations has expired.
- <sup>108</sup> FTC Report, *supra* note 34, at 66.
- <sup>109</sup> See Press Release, Office of Attorney Gen., Attorney General Cuomo Announces Reform Deal with Three NY Debt Collection Companies Over Deceptive Techniques, (June 2, 2009), available at [http://www.oag.state.ny.us/media\\_center/2009/june/june2a\\_09.html](http://www.oag.state.ny.us/media_center/2009/june/june2a_09.html); Press Release, Office of Attorney Gen., *Attorney General Cuomo Sues to Throw Out Over 100,000 Faulty Judgments Entered Against New York Consumers in Next Stage of Debt Collection Investigation* (Jul. 23, 2009), available at [http://www.oag.state.ny.us/media\\_center/2009/july/july23a\\_09.html](http://www.oag.state.ny.us/media_center/2009/july/july23a_09.html).



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